

(1) After DOE evaluates the bids received during the open window, it shall, within 45 days following the close of the open window for submission of bids for the reverse auction, announce on DOE's website and by direct mail the names of the successful bidders and the terms of their bids.

(2) DOE shall issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

(3) In the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which the tied bids meet the following criteria:

(i) Demonstrates outstanding potential for local and regional economic development;

(ii) Includes agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(iii) Has a strategic agreement in place to fairly reward feedstock suppliers.

(4) In the event more than one lowest tied bid equally meets the standards in paragraph (c)(3) of this section, the award will be distributed equally on a per capita basis among those lowest tied bidders meeting the standards.

**§ 452.6 Incentive award terms and limitations.**

(a) *Amount of incentive.* Subject to the availability of appropriated funds and the limitations in paragraph (c) of this section, an eligible cellulosic biofuels producer selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation of its eligible cellulosic biofuels production facility.

(b) *Failure to commence production.* Except in the circumstance of a force majeure event, as solely determined by DOE, failure by an eligible cellulosic biofuels producer that made a successful bid to commence production of cellulosic biofuels, at the eligible cellulosic biofuels production facility that was the subject of the successful bid, by the end of the third year after the

close of submission of the open window of bids for the reverse auction in which it submitted a successful bid, shall result in immediate revocation of DOE's award to that producer.

(c) *Failure of the successful bidder to meet annual production obligations.* Except in the circumstance of a force majeure event, as solely determined by DOE, a successful bidder's failure to produce at least 50 percent of the volumes specified in its production agreement by December 31 of any year covered by the bid shall result in immediate revocation of DOE's award; if the successful bidder produces 50 percent or more of the volumes set forth in the production agreement on an annual basis by December 31 of any year covered by the agreement, any production shortfall will be carried forward and added to the successful bidder's production obligations for next year covered by the agreement.

(d) *Shortfalls remaining at the end of the production period.* If, for any reason, by December 31 of the last year of the production agreement, the bidder has failed to produce the total production volumes for all years covered by the agreement, any such remaining shortfall shall be awarded to the bidder with the next lowest bid in the auction round for which the award was made. If, however, the next best bidder is unable to enter into a production agreement with DOE within 30 days after being notified of its award, the shortfall shall be allocated instead to the next reverse auction.

(e) *Incentive award limitations.* The following limits shall apply to awards of cellulosic biofuels production incentives under this part:

(1) During the first four years after the commencement of the program, the incentive shall be limited to \$1.00 per gallon. For purposes of this limitation, the program shall be deemed to have commenced on the date that the first solicitation for a reverse auction is issued;

(2) A per gallon cap over the remaining lifetime of the program of \$.95 per gallon provided that—

(i) This cap shall be lowered by \$.05 each year commencing the first year

## Department of Energy

Pt. 455

after annual cellulosic biofuels production in the United States exceeds 1 billion gallons;

(ii) Not more than 25 percent of the funds committed within each reverse auction shall be awarded to any single project;

(iii) Not more than \$100 million in production incentives shall be awarded in any one calendar year; and

(iv) Not more than \$1 billion in production incentives shall be awarded over the lifetime of the program.

(f) *Participation in subsequent auctions.* A successful bidder in a reverse auction under this part may participate in subsequent reverse auctions if the incentives sought will assist the addition of plant production capacity for the eligible cellulosic biofuels production facility associated with its previously successful bid.

(g) *Transferability of awards.* A production incentive award under this part may be transferred to a successor entity at the same production facility for which the award was made, provided that the successor entity meets all eligibility requirements of this part, including execution of an agreement with DOE to commence production of cellulosic biofuels in commercially significant quantities not later than three years of the date that bidding closes on the reverse auction in which the predecessor entity submitted a successful bid.

## PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

### Subpart A—General Provisions

Sec.

455.1 Purpose and scope.

455.2 Definitions.

455.3 Administration of grants.

455.4 Recordkeeping.

455.5 Suspension and termination of grants.

### Subpart B—State Plan Development and Approval

455.20 Contents of State Plan.

455.21 Submission and approval of State Plans and State Plan amendments.

### Subpart C—Allocation of Appropriations Among the States

455.30 Allocation of funds.

455.31 Allocation formulas.

455.32 Reallocation of funds.

### Subpart D—Preliminary Energy Audit and Energy Audit Grants [Reserved]

### Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

455.60 Purpose.

455.61 Eligibility.

455.62 Contents of a technical assistance program.

455.63 Cost-effectiveness testing.

455.64 Life-cycle cost methodology.

### Subpart F—Energy Conservation Measures for Schools and Hospitals

455.70 Purpose.

455.71 Eligibility.

455.72 Scope of the grant.

### Subpart G—State Administrative Expenses

455.80 Purpose.

455.81 Eligibility.

455.82 Scope of the grant.

### Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing

455.90 Purpose.

455.91 Eligibility.

455.92 State technical assistance awards.

### Subpart I—Cost Sharing

455.100 Limits to Federal share.

455.101 Borrowing the non-Federal share/title to equipment.

455.102 Energy conservation measure cost-share credit.

455.103 Requirements for applications for credit.

455.104 Rebates from utilities and other entities.

### Subpart J—Applicant Responsibilities—Grants to Institutions and Coordinating Agencies

455.110 Grant application submittals for technical assistance and energy conservation measures.

455.111 Applicant certifications for technical assistance and energy conservation measure grants to institutions and coordinating agencies.

455.112 Davis-Bacon wage rate requirement.